

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:
JOHN H. CHAPMAN

CHAPTER 13 CASE NO. 20-50446

DEBTOR

BANKRUPTCY JUDGE
ALAN M. KOSCHIK

John H. Chapman
833 Hartville Road
Atwater, Ohio 44201

Plaintiff

vs.

COMPLAINT TO DETERMINE
SECURED VALUE AND AVOID
UNSECURED MORTGAGE LIENS

WELLS FARGO BANK, N.A.
First Mortgage Holder
c/o Carrington Mortgage Services LLC
1600 South Douglass road
Anaheim, California 92806

and

NP154, LLC
Second Mortgage Holder
c/o Shellpoint Mortgage Servicing
P.O. Box 10826
Greenville, South Carolina 29603 0826

Defendants

NOW COMES PLAINTIFF-DEBTOR, John H. Chapman, by and through
Counsel, Timothy R. Thomas, Esq., and for his Complaint against Defendants states and
avers as follows:

1. Plaintiff is an adult individual residing in Atwater, Ohio.
2. Plaintiff filed a Bankruptcy proceeding under Chapter 13 of Title 11 of the

United States Code (hereafter “Bankruptcy Code”) on or about February 27, 2020.

3. Defendant, WELLS FARGO BANK, N.A., is a FDIC lending institution with its principal office located in San Francisco, California.

4. Defendant, NP154, LLC, is a FDIC lending institution with its principal office located in Westport, Connecticut.

5. This action is properly commenced as an adversary proceeding pursuant to Fed. R. Bankr. Proc. 7001.

6. This adversary proceeding relates to and arises in the Chapter 13 case of the Plaintiff bearing case number 20-50446, which is currently pending in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division.

7. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334 and 157 and the General Order No. 2012-7 entered in this District on April 4, 2012, and the claims set forth herein are core proceedings within the meaning of the United States Bankruptcy Code.

8. This Court has personal jurisdiction over the Defendants pursuant to Fed. R. Bankr. 7004(f).

9. This District is the proper venue for this adversary proceeding pursuant to 28 U.S.C. § 1409(a).

COUNT I: AVOID MORTGAGE OF NP154 LLC

10. The Debtor owns a fee simple interest in real estate located at 833 Hartville Road, Atwater, Ohio 44201, and known as parcel number 28-038-00-00-018-001.

11. This Property, which serves as the Debtor's principal residence, has a probable fair market value of \$232,500.00 pursuant to the attached appraisal. See attached Exhibit "A".

12. The property is encumbered by a first mortgage to WELLS FARGO BANK, N.A. in the approximate amount of \$213,849.97 pursuant to the proof of claim (Claim No. 2-1) filed in the instant case. Copy of proof of claim is attached hereto as Exhibit "B".

13. The residence is further encumbered by a second mortgage to NP154, LLC. The approximate balance owed to NP154, LLC is \$53,525.18, pursuant to the *Judgment Entry and Decree in Foreclosure* dated December 24, 2019, in NP154, LLC vs. John H. Chapman, et al., Portage County Common Pleas Case No. 2019 CV 00220.

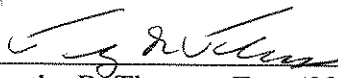
14. Based on provisions of 11 U.S.C. § 506(a) and the decision rendered by the Sixth Circuit Court of Appeals in In re Lane, 280 F.3d 663 (6th Cir. 2002), because the fair market value of the residence (\$232,500.00) is less than the balance owed on the first mortgage to WELLS FARGO BANK, N.A. (\$213,849.97) the second mortgage of NP154, LLC, is a secured claim only to the extent of the difference between the fair market value of the property and the unpaid balance owed on the first mortgage (\$232,500.00 - \$213,849.97), i.e., \$18,650.03. The remainder of the second mortgage of NP154, LLC, \$34,875.15, will be treated as an unsecured claim.

15. The deadline to file a proof of claim in this case was March 2, 2020. As of this date NP154, LLC, did not file a claim.

16. As a result, should NP154, LLC, file a claim, it should be considered untimely and disallowed. NP154, LLC, should not receive any distribution through Plaintiff's Chapter 13 Plan.

WHEREFORE, Plaintiff prays that this Court enter its Order declaring and determining the mortgage lien held by NP154, LLC, encumbering the Debtors' principal residence to be an unsecured claim and cancelled of record upon successful completion of the plan pursuant to 11 U.S.C. § 506 and declaring that NP154, LLC, receive no distribution through the Plan as NP154, LLC, did not timely file a claim in this case, and for such other and further relief as is just and proper.

Respectfully submitted,



Timothy R. Thomas, Esq. (0033126)

Attorney for Debtor

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SERVICE TO:

US Trustee (ECF)

Chapter 13 Trustee (ECF)

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Wells Fargo Bank, N.A. (USPS Mail)

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Wells Fargo Bank, N.A. (ECF)

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NP154, LLC (USPS Mail)

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